

ADEPT
Legal Commentaries

November 2001

Parliament's activity during 5-9 November

November 14, 2001

During this week numerous public officials declared that the Republic of Moldova had respected all the conditions stipulated in the Memorandum signed with IMF and there was no obstacle in resuming the external crediting of our country. The respective declarations have been accompanied by a febrile parliamentary activity. Parliament continued the examination of those draft laws that Moldova is to adopt according to its obligations in order to obtain the favorable vote of the IMF. Thus, during plenary sessions of 8-9 November Parliament examined and passed Law on Insolvency, Law on modifying the Law on financial institutions, and did away with decision that prohibited the wood export.

Also, Parliament paid much attention to the legislative acts from social, financial and fiscal domains as well as to some complex acts developed by Government according to its program of activity.

I. Legislative acts finally passed:

1. Law on modifying and completing the Law on financial institutions that provides the introduction of new regulations regarding the following:

- a) Definition of these notions: "administrator", "affiliated to some person", "crediting documents", etc.
- b) Right of the National Bank of Moldova (NBM) to refuse the release of authorization when the capital of the solicitant doesn't correspond to the quantum established and expenditures related to the creation of the bank.
- c) Foreign bank's obligation to notify NBM about the opening of a representation in the Republic of Moldova as well as these branches to operate just in the domains of informing, linking and representing.
- d) It is necessary that NBM approved beforehand the opening of commercial banks' branches and representations in the Republic of Moldova.
- e) It is necessary that NBM gave a written permission for concluding transactions with shares from the bank's capital.
- f) Power of the executor of bank credit contract' s title.
- g) Hardening the sanctions that might be applied by the NBM in order to punish the banks that committed illegal acts as well as expanding the list of actions that may be considered as illegal, etc.

ADEPT Commentary: The initiative of adopting the respective modifications belong to NBM that thus strengthens its positions and obtain additional tools to control the bank system of the country. Evidently this thing caused vehement protests among the representatives of commercial banks. They individually or through the Banks Association of Moldova expressed their deepest dissatisfaction with the new regulations calling them unconstitutional and discriminatory.

2. Draft law on modifying and completing the Law on Promoting and Protecting Small Business that provides establishing new regulations regarding the following:

- a) criteria of relating industrial units to micro and small industrial units (based on the number of employees and sums of sells);
- b) excluding some types of industrial units from the sphere of applying the law: financial institutions, fiduciary and ensurance companies, funds of investments, Lombard loans etc.
- c) funds for supporting and developing small business (goal of creation and way of activity, use of sources and control on their use);
- d) regulating planned controls by representatives of state control bodies (not more than once a year), etc.

ADEPT Commentary: We want to remind our readers that the necessity of supporting and promoting small business has been mentioned by the majority of the last 5 Governments, but just the I. Ciubuc (1997) Government succeeded to promote efficient and substantial amendments in the legislation that regulates the activity of the respective economic agents. Tarlev Government succeeded to promote the first essential amendment to the respective law. This is in line with governmental program that stipulates support for the representatives of middle and small business.

3. Law on completing the Code of Civil Procedure and Law on State Tax through which the district councils have been exempted of paying state taxes when the administrative-territorial units that they represent adopted measures for their patrimonial interests.

ADEPT Commentary: This amendment has its logic and motivation. It will create a situation favorable to industrial units administered by public authorities that unlike private economic agents will be exempted of paying considerable sums of money and thus will have the opportunity to appeal to courts when they don't have sufficient reasons and are not sure of legality of their acts.

II. Legislative acts passed in the first reading

We would like to especially mention several drafts passed in this period:

1. Draft law on forestalling and fighting money laundering that contains important provisions referring to the following:

- a) notions of "money laundering", "illegal incomes" and "suspicious financial operations);
- b) procedure of recording suspicious and limited financial operations
- c) limiting the action of commercial secret
- d) statute of National Office for Forestalling and Fighting Money Laundering;
- e) international cooperation in this domain, etc.

ADEPT Commentary: This is one of the most important laws in the field of fighting corruption and organized criminality, and the delay of its adoption was enough to form an inadequate public opinion and suppositions that "somebody" didn't want this law.

2. Draft law on Diplomatic Service that include important and new provisions referring to the following:

- a) diplomatic service and its objectives;
- b) system, basis functions of diplomatic institutions;
- c) personnel of diplomatic institutions, its rights, specific obligations, social benefits and wages;
- d) diplomatic rank, etc.

ADEPT Commentary: It is important to mention, in the context of this law, the situation created between Presidency Apparatus and Ministry of Foreign Affairs (MFA) after some representatives of MFA disclosed the new concept of external policy of the Republic of Moldova.

If so far the diplomatic activity was a closed circuit, for "intimate people", now, once this law has been adopted, the way and conditions of activity of the diplomatic service shall have a more transparent character and possibly more accessible for people with merits who really deserve it.

3. Draft law on recounting pensions. It provides an increase, from December 1, 2001, for age limits, invalidity and successors pensions.

ADEPT Commentary: It is said that there will be an increase on average by 36 percent of the established pensions' quantum according to the provisions of the Law no 156/XIV of 14.10.1998.

4. Draft law on modifying art. 10 of the Law on Petitioning. It stipulates the application of new regulations that would allow the examination of the anonymous petitions when they contain information related to state and public interests.

ADEPT Commentary: This draft has been submitted by the President of the Republic of Moldova. Government negatively evaluated it, and its examination caused a lot of discussions in Parliament. Numerous deputies declared that this law would signify a return to the practices of totalitarian regime.

5. Draft law on control over alcohol, educating people in the spirit of abstinence and eliminating the consequences of alcohol abuse and unauthorized use of drugs and other psychotropic substances.

ADEPT Commentary: The name of the draft clearly reflects its contents. Its authors propose new administrative and social measures to fight harmful social phenomena.

Legal analysis November 12-16

November 22, 2001

The Parliament was very productive during November 12 - 16. The Law on insolvency and Law on Preventing and Fighting money Laundering were the most important laws examined, accordingly we would give them due consideration.

I. Legal acts passed in the final reading

1. Law on insolvency, no.632-XV of 14.11.2001 (Official Monitor no.139-140 of 15.11.2001)

ADEPT comment: There has been a lot of controversy around the law from the first reading, especially as for the aims and tasks of such a law. In brief, this law combines and completes the provisions of the Law no 786-XIII of 26.03.1996 on Bankruptcy and Law on Enterprise Restructuring no. 958-XIII of 19.07.1996. Furthermore, the law includes provisions related to judicial procedures (specific to the Code on Civil Procedures), which are to be enforced by the courts in bankruptcy cases.

The aim of this law is specified in Article 1, namely to establish a legal framework for restructuring enterprises in view of their financial and economic recovery, as well as for initiating bankruptcy procedures in view of settling creditors' claims from the debtors patrimony. Further the law is more specific:

- a. Subjects to the law;
- b. Restructuring stages: selecting the enterprises, debt moratorium; establishing Restructuring Commission; developing restructuring plan; converting debts into shares, etc.
- c. Rights and obligations of the enterprise leadership and creditors' council;
- d. Initiating bankruptcy procedures and participants to the process;
- e. Consequences of the bankruptcy process;
- f. Administering liabilities;
- g. Settling simple contract creditors' claims;
- h. Restructuring plan;
- i. Disqualifying debtors;
- j. Particularities of bank, farm, insurance companies, and security market bankruptcy;
- k. Responsibility of the debaters' leadership.

2. The Law no.633-XV of 15.11.2001 on Preventing and Fighting Money Laundering is aimed at preventing and fighting money laundering. Money laundering is defined as *"premeditated actions, aimed at legalizing illegally acquired money, goods or income via violation or fraud; or non-disclosure, disguise or altering of information about the source, flow and ownership of the money, goods or income known by a citizen to be acquired through violation or fraud; knowingly acquiring, owning or using goods acquired by fraud, taking part in association, agreement or complicity by providing help or advice in view of committing such actions."*

ADEPT comment: Noteworthy, initially the draft law provided that financial institutions should fill in certain forms for any cash or wire transactions exceeding 1800-3600 Lei (for natural entities) and 9000 (for legal entities). During the debates the Parliament decided to raise the amounts to 100.000 - 200.000 lei (natural entities) and 300.000 (legal entities).

Also, on the grounds of lack of funds, the Parliament gave up the idea of establishing a specialized office on money laundering. This fact displeased the authors of the draft as well as some other MPs who supported the idea of an autonomous specialized body with large competencies but answerable to the Prosecution Office. Many experts consider that giving up the idea of a specialized body and granting extra competencies to the General Prosecution might hinder the law enforcement. It is a common practice for documents to be submitted to the General Prosecution for them to take actions specified in the legislation, but those materials seldom end in a penal case, and all the investigations and violations of the law depicted by the Court of Accounts remain unpunished.

Anyway, given the hurry in adopting the law and the complexity of the issue it is expected that the law will be modified and completed in the nearest future.

3. Law on completing and modifying the Law on Entrepreneurial Licenses.

ADEPT comment: This law prohibits entrepreneurs to conduct the following activities based on an entrepreneurial license: sale in commercial centers, sale of tobacco and alcohol. Also the holder of the entrepreneurial license is obliged to submit documents on the origin of merchandise. The mayoralities are obliged to issue licenses in territories where there are no fiscal bodies.

It is likely that entrepreneurs selling goods in commercial centers will protest as they used to have high earnings and pay symbolic amount of taxes.

4. The Law on the modification and completion of Article 11 of the Law on Government.

ADEPT comment: Under the law, an additional Government responsibility would be to support national communities "of Moldovans and Gagauz" residing outside the Republic of Moldova. Previously the law stipulated just support for "Moldovans".

5. The Law on interpreting Article 10 of the Law on Amnesty on the occasion of the 10th anniversary of the Republic of Moldova independence.

ADEPT comment: This law is not applied in the case of:

- a. Persons whose term ended prior to the enforcement of the Law on Amnesty;
- b. Persons whose cases are under investigation, preliminary investigation, first hearing, or appeal; or persons who serve their term based on the final court ruling.
- c. Persons who committed offences after July 26, 2001.

II). Laws passed in the first reading

The most important laws considered this month are:

1. Law on Ratifying the Convention on Refugee Status.

ADEPT comment: There have been a lot of debates around the ratification, many deputies fearing that it would attract considerable flow of refugees to the country and Republic of Moldova is unable to provide them social and medical security. Another fear has been that national security might be under threat.

On the other hand the supporters of the law claim that there would be no flow of refugees as Republic of Moldova is not an attractive country with regard to social security and does not offer sufficient security guarantees. Expenses related to the enforcement of the Convention may be covered in the initial stage by the United Nations' High Commissariat for Refugees, later on, though, the guarantees offered to the refugees wouldn't exceed those provided to foreign citizens which are less than those for the Republic of Moldova citizens.

2. Law on modification and completion of the Law on the Production of ethylic alcohol and alcohol.

ADEPT comment: Business will be obliged to register their products with the State Agency for Industrial Production Protection.

In addition, the law prohibits:

- a. pharmacies to deliver and sell ethylic alcohol engross or in quantities exceeding 10 liters.
- b. companies lacking appropriate production equipment and storage facilities to produce ethylic alcohol;
- c. companies to set prices running counter to the minimal prices established by the Government for the respective products.

Legal analysis November 19-23

November 27, 2001

This week was marked by major developments in political events and foreign policy. Interestingly enough, all high rank officials of the Republic of Moldova left the country for official visits this week. Thus, the President of the country signed the basic treaty with the Russian Federation, an official delegation headed by the Speaker of the Parliament took part at the Sankt-Petersburg NIS General Assembly, whereas during its one week visit to China a Government delegation headed by Prime Minister has broken all the records in concluding bilateral and interdepartmental with Peoples' Republic of China. In addition, Minister of the Exterior presided a UN session and signed a joint agreement on fighting terrorism.

The boom in the foreign policy activity has had an impact on the legislative activity as well. After passing the package of laws the Parliament had to adopt prior to November 27 when the adoption of the state budget for year 2002 is due, MPs seem to enjoy a break and focus on less known but not less important draft laws.

I. Laws passed in the final reading

1. Law on the Republic of Moldova's Adhesion to the Convention on Refugee Status and Protocol on the Refugee Status.

ADEPT Comment: As in the case of the first reading, the law was surrounded by heated discussions. Member of the Braghis Alliance feared that once the law is adopted there would be a great flow of refugees to Moldova and eventually extra spending to the budget. The supporters of the law argued that there wasn't any increase in the flow of refugees in the neighborhood countries after their adhesion to the Convention. On the contrary, UN High Commissariat for Refugees has pledged its support for the governments efforts in refugees protection.

After all, the law was adopted but with a series of modifications with regard to the social and material guarantees provided to the refugees seeking asylum. Republic of Moldova is the 142 state to adhere the Convention and the last but one European country to adhere to it fifty years after its adoption

2. The Law on the modification and completion of the Law on the Presidency of the Republic of Moldova.

ADEPT Comment: The law considerably reduces the guarantees offered free of charge to the former presidents of the country, i.e. Medicare, personal security, diplomatic immunity, etc.

3. The Law on modification of the Law on cancelling financial penalties and sanctions.

ADEPT Comment: The law extends by 1 month the term of canceling the debts, from November 1 to December 1, 2001. Experts claim that this law didn't have the effect it was supposed to, as the incentive to cancel the enterprise's accrued penalties didn't motivated them to pay off their debts to the state budget.

4. The Law on the modification of the Penal Code.

ADEPT Comment: This law adjusts the Penal Code to the modifications operated to Article 25 of the Constitution on July 12, 2001. Under the amendment the arrest period could be extended only by the court (previously only the Parliament was entitled to extend the arrest term by a six months).

5. The Law on modification of the Law on the State Budget for year 2001.

ADEPT Comment: This law supplements the Fiscal Body budget by another 12 million MDL, allowing it to conduct its activities until the end of the year. Many experts point to the paradox of such an increase of the Fiscal Body's budget under the circumstances when taxes levied by it significantly decrease.

6. The Resolution of the Parliament on approving the structure and personnel of the National Army and Defense Ministry.

ADEPT Comment: The said institutions would include 9.600 people, out of which 2.500 civilians. The President of the Country has initiated the reduction of the National Army personnel in an effort to reduce the spending for its upkeep.

7. The Resolution of the Parliament on enforcement of the law on military service of the Republic of Moldova citizens.

ADEPT Comment: This resolution was passed after the Government and relevant Parliament Commission undertook a control of the law enforcement as part of Parliament work plan for the fall session. After hearing the reports, the Parliament ruled that national defense is under-financed, as is the organization of the military service. To solve the problem the Parliament instructed the Government and Commission on the National Security to present back recommendations on improving the relevant legal framework.

8. The Resolution of the Parliament on abrogation of the Resolution on certain measures to improve the education at the Free International University of Moldova.

ADEPT Comment: The relevant resolution was passed back in 1997 and obliged the Government and relevant Ministries to facilitate ULIM activity, whereas the Healthcare Ministry was obliged to provide ULIM with clinical facilities based on a contract. The resolution was appealed in the Constitutional Court on the grounds that the Parliament exceeded its competencies and groundlessly favored a private education institution.

A number of the majority faction MPs insisted on abrogating the resolution and submitted a motion in 2000. Their opponents claim that upon abrogation a lot of medical students will be expelled, which would obviously upset a lot of people. In order to avoid conflicts and to observe students' interests, authorities will strive to transfer ULIM students to the State University, but this wouldn't be a task easy to achieve.

II. Legislation passed in the first reading

1. Draft law on the modification of the Electoral Code.

ADEPT Comment: The authors of the draft (Christian-Democrats), proposed to establish a progressive electoral threshold varying based on the number of organizations associated in the electoral bloc. Thus, for an electoral bloc formed of 2 socio-political organizations a 9% threshold is proposed, whereas for a bloc of 3 and more organizations a 12% threshold. It is worth mentioning that according to some experts those amendments wouldn't "clean" the political spectrum as there are more efficient and interesting means of doing so - see "[A new Electoral System for Moldova!](#)" by Igor Botan, October 26, 2001.

2. Draft law on the unemployment fund of the Republic of Moldova.

ADEPT Comment: The draft envisages the establishment of a fund acting as a legal entity to enforce the policies regarding labor force and social security of the unemployed and their further employment. There would be no extra budget spending to establish the fund, as expenses related to the fund are included in the state budget under Social Security National Chamber.

3. Draft law on modification of the Penal Code and Code of Administrative Offence.

ADEPT Comment: The amendment to Article 43 of the Penal Code is aimed to change conviction procedure by replacing a term in prison with a probation period (from 5 to 7 years).

4. Draft law on the modification and completion of the Law on Restructuring Agricultural Companies during privatization process

ADEPT Comment: The said modification is aimed to reinforce the above mentioned law commencing July 1, 2001. It is worth mentioning that the law envisages a mechanism without a precedent in legal practice or theory, and is considered to be a wrong one by many experts. According to the legislative procedure the former law should be abrogated and then a new one passed when it is deemed necessary.

Parliament activity review November 26-30

December 6, 2001

Except for the Community of Independent States Summit, and the agreement between Moldova and Russia on the gas supply and debt restructuring, Moldovan foreign policy was marked by several failures. Thus, Ukraine avoids cooperation with Moldova as far as joint border customs, the only communication is through Ministry of Foreign Affairs. Furthermore, Romanian President councilor announced that President Iliescu has a very busy schedule and wouldn't be able to visit Chisinau, despite the fact that President Vladimir Voronin himself, announced the visit earlier on during a press conference.

As for the Executive, this week was marked by Government reshuffles, sanctions applied, even lay offs of some high rank officials. Later during the week, at the "Government Hour" in Parliament, deputies criticized several Ministers and recommended them to change their rapport with the Parliament.

This week, Parliament resumed its main activity passing legislation, thus moving away from politics. In a record time and without too many debates, the budget for year 2002 was adopted in the third reading during a special plenary session. In a similar manner, the Law on Social Insurance Budget for year 2002 was adopted in the first reading.

I. Laws examined and adopted

1. Law on modification of Article 10 of the Law on Petitions

ADEPT comment: The President of the Republic of Moldova came with the initiative for the anonymous petitions to be examined. The amendment raised a lot of controversy when it was discussed in the first reading in Parliament. During the final reading, deputies agreed that only petitions regarding events that pose a threat to the state security will be examined. There is no definition of the "state security" it could be deduced from the Law on the State Security and Law on the State Secret. Consequently, it might well happen that a public servant might interpret any petition either as pertaining to state security or as an ordinary matter.

2. Law on modification of Article 2001 of the Code of Administrative Offence

ADEPT comment: The amendment specifies administrative liability for electioneering on the day preceding the elections. Previously, such a liability referred solely to electioneering on election day

3. Law on completing Article 51 of the Law on the Local Public Administration

ADEPT comment: The amendment broadens the responsibilities of the mayoralty secretariat to include notary functions, which are stipulated in the Law on the Notary. As it was stipulated in the first draft, secretaries of the mayoralties could have performed notary responsibilities. This is inadmissible and was the subject of ardent debates in Parliament.

4. Law on modification and completion of legal acts regulating the quality of goods and drinking water

ADEPT comment: This law is aimed to ensure the enforcement of the Law on drinking water. It also introduced administrative and penal sanctions for the violation of the legislation on quality of tap water, preserving water sources and consumer protection.

5. Law on modification and completion of the legal acts regulating entrepreneurial activity

ADEPT comment: This law prohibits entrepreneurs (except for farmers, individual companies and license holders) to make transactions in cash exceeding 5,000 MDL per month. Also the law allows relevant bodies to sanction the entrepreneurs violating the law.

II. Legal acts adopted in the first reading

1. Draft law on the social security budget for year 2002

ADEPT comment: The draft law provides a budget of 1,835,016 MDL, a 20% increase as compared to the Social Security Budget for 2001. It also envisages a reduction of the social security quota from 31% to 29%. At the same time it envisages a quota increase for the owners of agricultural lands 1.7 MDL/hectare. Overall, the social security budget includes 5 funds, out of which the following will be covered: pensions, allowance for families with many children, work injury and professional disease insurance, unemployment indemnity, employees' benefits.

2. Draft law on declaration and control of the assets of high rank officials, judges, prosecutors and public servants

ADEPT comment: The draft specifies who and what has to declare, obligation to declare, content, form and term of submitting the declaration, bodies entitled to collect the declarations and bodies entitled to verify the declarations, non-disclosure of information, transparency, etc.

As the draft provides guarantees of non-disclosing information, some opposition deputies initially opposed the draft. Though, finally all the deputies voted in support of the draft.

3. Draft law on modification and completion of the Code on Legal Offence

ADEPT comment: The draft provides tougher liabilities for breaching laws on labor and employee security.